United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-1358

To be argued by
THOMAS P. SMITH

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1358

UNITED STATES OF AMERICA,
Libellant-Appellee,

—v.—

FORTY-THREE THOUSAND FIVE HUNDRED NINETY-SIX DOLLARS ($43,596.00) IN UNITED STATES CURRENCY, ETC.,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE LIBELLANT-APPELLEE

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BRIEF FOR THE LIBELLANT-APPELLEE

Statement of the Case

On November 18, 1960, government agents armed with a search warrant raided the home of the claimant Jack Jacobson, arresting him for violation of the federal wagering tax provisions of the United States Code, 26 U.S.C. §§ 4411, 7203. Contemporaneous with that arrest, $43,596 in currency was seized. Eighteen months later, on July 23, 1962, criminal charges against Jacobson were dismissed by the government. In the meantime, however, forfeiture proceedings were instituted against the seized currency by the filing of a libel on May 31, 1962.

With the exception of the filing of five depositions on July 23, 1962, the forfeiture action lay relatively dormant between the date on which criminal charges were dismissed and May 15, 1963, when the District Court approved a

stipulation between the government and the claimant, permitting the seized currency to be placed in interest-bearing bank accounts on the condition that no objection would be raised at the time of trial that the *res* had been changed.

Thereafter, on July 15, 1963, the claimant and the government entered into another stipulation by the terms of which the United States would retain $5,000 of the seized currency, return the balance of the money to the claimant, and withdraw the forfeiture action with prejudice (1a-4a). On the following day, the Honorable William H. Timbers entered an order approving the stipulation which the parties themselves had agreed upon, and the forfeiture action was thereupon withdrawn.

Four years later the United States Supreme Court held in *Marchetti* v. *United States,* 390 U.S. 39 (1968), and *Grosso* v. *United States,* 390 U.S. 62 (1968), that individuals, who had properly asserted their constitutional privilege against self-incrimination, could not be criminally punished for non-compliance with the requirements of 26 U.S.C. §§ 4411 and 7203. Thereafter, in *United States* v. *U. S. Coin and Currency,* 401 U.S. 715 (1971), the Court held that the Fifth Amendment privilege against self-incrimination may properly be invoked in forfeiture proceedings pursuant to 26 U.S.C. § 7302, and that *Grosso* and *Marchetti* were fully retroactive.

Late in September of 1973, the claimant filed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, seeking post-judgment relief from Judge Timbers' order approving the July 15, 1963 agreement between Jacobson and the government. After oral argument and due consideration of the briefs submitted by both sides, the Honorable Jon O. Newman denied the claimant's motion, finding no justification for the nearly two and one-half year delay between the filing of the Rule 60(b) motion and the Supreme Court decision in *Coin and Currency.*

Shortly thereafter, the claimant moved to reargue, offering in support of his motion affidavits intended to supply the justification which the District Court had found lacking. On January 31, 1974, Judge Newman denied the claimant's Motion to Reargue. It is from this ruling that the claimant appeals.

Questions Presented

1. Did the District Court abuse its discretion in finding that the claimant's Rule 60(b) motion had not been brought within a reasonable time?

2. Should an order approving an agreement between the parties as to the disposition of the *res* in a 26 U.S.C. § 7302 forfeiture action be set aside on the basis of a claim under Rule 60(b) that the agreement was exacted under duress and at the expense of the claimant's constitutional rights?

Statutes Involved

Title 26 U.S.C. § 7302

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence

relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

Rule 60(b), Federal Rules of Civil Procedure

(b) Mistakes; Inadvertence; Excusable Neglect: Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

The Facts

Contrary to claimant's contention, there is nothing in the record to indicate that the "government was never very proud of its case against Jacobson. . . ." The single count indictment, charging Jacobson with violation of 26 U.S.C. § 7203, indicates that probable cause existed to bring him to trial. With respect to the forfeiture action, the seizure of $43,596 from the claimant's home, contemporaneous with his arrest, was authorized by a search warrant issued by a United States Commissioner. Paragraphs three, four and five of the affidavit in support of that warrant referred to information given by a reliable informant with respect to the claimant's alleged violations of Internal Revenue laws. The warrant itself concluded that there was probable cause to believe that claimant's home contained, among other things, currency used in violation of the Internal Revenue laws of the United States. The government not only had the right to proceed against Jacobson under the existing criminal law, see *United States* v. *Kahriger,* 345 U.S. 22 (1952); *United States* v. *Lewis,* 348 U.S. 419 (1955), but institution of forfeiture proceedings pursuant to 26 U.S.C. § 7302 was entirely justified as well.

Forfeiture proceedings against the seized currency were commenced, not contemporaneously with the dismissal of criminal charges against Jacobson on July 23, 1962, but almost two months prior thereto, on May 31, 1962. Moreover, the compromise agreement from whose terms the claimant now seeks relief was entered into on July 15, 1963, slightly more than one year after the dismissal of the indictment. Thus, the government did not institute forfeiture proceedings as a "last ditch" alternative to criminal prosecution. Nor do the facts support the contention that the July 15, 1963 stipulation, which lays at the basis of this appeal, was exacted from a claimant who feared that criminal proceedings would be reinstituted unless an accord was reached.

The compromise settlement, which terminated the forfeiture action, was a practical, expedient, and totally voluntary method of avoiding a costly trial which the government had every right to demand. Judge Timbers' order approving the earlier May 15, 1963, stipulation, which permitted the seized currency to be placed in interest-bearing accounts on the condition that no objection would be raised by the claimant at trial, indicates that, long after dismissal of Jacobson's indictment, the government contemplated a trial in the forfeiture proceeding. At the trial level alone, counsel fees could well have exceeded the amount of settlement. And there was no guarantee that the matter could be resolved without appellate review.

In part, this uncertainty was due to the identity of a confidential informant and the nature of the information he possessed. The claimant, seeking to explore this unknown quantity, through counsel, took the depositions of Special Agents McNerney and Kennedy, the federal agents on whose affidavit the search warrant had been issued. The government vigorously opposed disclosure of the information sought to be explored. Examination of the McNerney deposition (at 6-9, 33, 36-39) indicates concern on the part of claimant's counsel as to what role, if any, that informant would play in the forfeiture proceedings. So too does the fact that claimant sought, pursuant to Rule 37(a), F. R. Civ. P., an order compelling answers to the questions asked during the McNerney and Kennedy depositions.

While the government would not have relied on the informant as part of its proof in the forfeiture action had his identity been permitted to remain secret, he may well have taken the stand as part of the government's proof had the District Court ordered that his identity be disclosed. In such event, the value of his testimony to the government in the forfeiture proceeding would no longer have been outweighed by the desire to keep his identity secret. Conceivably, that informant's testimony alone, and apart from

the wagering tax stamp provisions, could have established an intent on the part of the claimant to use all, or at least a portion, of the seized funds in violation of the Internal Revenue laws. Whether this contingency was factually, or legally, possible was surely a factor taken into consideration by the parties at the time the compromise in question was reached.

Judge Timbers never ruled on the claimant's Rule 37(a) motion, for the parties shortly thereafter agreed that $5,000 would be retained by the government as "monies rightfully due and owed to the United States pursuant to this compromise" (2a). The balance of the seized currency was returned to the claimant, who was neither forced to incriminate himself, nor deprived of property at the expense of his constitutional rights.

The present motion, brought more than a decade after Judge Timbers' order, and nearly two and one-half years after the *Coin and Currency* decision, seeks to undo an accord and satisfaction reached in a legal proceeding pursuant to a statute whose validity is totally unimpaired by either *Coin and Currency* or *Marchetti* and *Grosso*.

ARGUMENT

I.

The District Court did not abuse its discretion in denying relief on the grounds that claimant's Rule 60(b) motion had not been brought within a reasonable time.

It is well settled that Rule 60(b) vests the District Court with broad discretion in determining whether a motion pursuant to subsections (5) and (6) has been brought within a reasonable time. 7 J. Moore, Federal

Practice ¶ 60.19. This Court has frequently stated that in reviewing a denial of relief under Rule 60(b), inquiry is confined to the issue of whether the District Court has abused its discretion. *Sampson* v. *Radio Corporation of America*, 434 F.2d 315, 317 (2d Cir. 1970); see also *Brennan* v. *Midwestern United Life Ins. Co.*, 450 F.2d 999, 1003 (7th Cir. 1971), *cert. denied*, 405 U.S. 921 (1972); *Hand* v. *United States*, 441 F.2d 529, 531 (5th Cir. 1971). This Court has also held that "a determination of such a motion will not be disturbed upon appeal unless there has been *a clear abuse of judicial power.*" *Parker* v. *Broadcast Music, Inc.*, 289 F.2d 313, 314 (2d Cir. 1961) (emphasis added). See also *Altman* v. *Connally*, 456 F.2d 1114, 1116 (2d Cir. 1972); *Nedderlandsche Handel-Maatschappij, M.V.* v. *J. Emm, Inc.*, 301 F.2d 114, 115 (2d Cir. 1962). The government respectfully submits that the District Court acted well within its discretion in denying the claimant's Rule 60(b) motion.

In denying the claimant's motion to set aside Judge Timbers' order approving the parties' July 15, 1963 settlement agreement, Judge Newman did not simply and offhandedly rule that the Rule 60(b) motion was untimely. In a well-reasoned, detailed memorandum, Judge Newman noted that, while Rule 60(b) is generally not available for relief from consent judgments, see e.g., *Walling* v. *Miller*, 138 F.2d 629 (8th Cir. 1944); 7 J. Moore, Federal Practice ¶¶ 60.19, 60.27[2], occasionally such relief has been granted. Although the remainder of the Court's Memorandum is devoted to an analysis of the timing of the claimant's motion, rather than a discussion of the Court's power to grant relief from an order approving a settlement agreement, the distinction which Judge Newman drew between typical Rule 60(b) motions and those seeking relief from consent decrees is relevant to his determination that relief had not been sought within a reasonable time.

The District Court's memorandum of decision indicates that it weighed several equities before determining that claimant's motion was untimely. The Court stated at 2-3:

> "Motions under Rule 60(b)(6), as well as (5), though relieved from the one-year time provisions of the Rule, must nonetheless be brought within a reasonable time. The Supreme Court decided *Coin and Currency* on April 15, 1971. Claimants filed this motion on September 27, 1973, nearly two and one-half years later. Claimants offer no reason for the delay. The Government . . . is entitled to know within a reasonable time what portion of the funds actually forfeited will be reclaimed. In *Coin and Currency* the Supreme Court accorded full retroactivity to its decision in the expectation that the government would undergo 'the relatively insignificant inconvencience involved in defending any lawsuits that may be anticipated.' *Ibid.* Surely time is a factor in determining the relative insignificance of the inconvenience."

Besides considering the claimant's interest in obtaining relief, the foregoing portion of Judge Newman's opinion demonstrates that the Court considered at least three other interests with respect to the timeliness of claimant's motion: The governmental interest in knowing within a reasonable time what claims would be made on the basis of *Coin and Currency;* the significance of the inconvenience in defending claims allegedly predicated on *Coin and Currency;* and the extent to which the present claim was one which the government had reason to anticipate. The fact that the order from which the claimant sought relief merely approved a settlement between the parties is particularly relevant to this latter interest. See *Sampson* v. *Radio Corporation of America, supra,* 434 F.2d at 317, wherein the Court stated "a motion under Rule 60(b) cannot be used to avoid the consequences of a party's decision to settle the litigation. . . ." Clearly, if the government had

little reason to anticipate the present challenge in early 1961, it had even less reason to expect it two and one-half years thereafter.

The claimant, in effect, contends that the District Court is precluded from holding a Rule 60(b)(6) motion to be untimely unless it first finds that the movant was guilty of "substantial fault" in the sense that he had actual knowledge or a right, but, either knowingly or through lack of diligence on the part of counsel, failed to take action. The government respectfully submits that Rule 60(b) imposes no such restriction on the discretion of the District Court, nor do the cases upon which the claimant relies.

Radack v. *Norweigian American Line Agency, Inc.*, 318 F.2d 538 (2d Cir. 1963) imposes no such requirement. To the contrary, *Radack* "makes clear that 'lack of notice of . . . dismissal acts as a bar to the efficacious operation of subsections (1), (2) and (3)' so that if notice . . . was not received . . . *'the judge has the power, in the exercise of a sound discretion, to grant relief* under Rule 60(b) (6)' ", *Cavalliotis* v. *Salomon*, 357 F.2d 157, 159 (2d Cir. 1966) (emphasis added). The one unifying factor underlying the cases relied upon by the Court and both parties to this action, the government respectfully submits, is the discretionary nature of Rule 60(b). As the Court in *Robinson* v. *E. P. Dutton & Co.*, 45 F.R.D. 360, 362 (S.D.N.Y. 1968), stated:

> "The term 'discretion' denotes the absence of a hard and fast rule. * * * When invoked as a guide to judicial action it means * * * a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result."

The affidavits offered in support of the motion to reargue at best indicate the claimant's lack of knowledge of *Coin and Currency* and the presence of ethical consider-

ations which in the view of counsel rendered it improper that he be sought out for the purpose of asserting a claim. In denying the motion to reargue, the District Court, in effect, found that the reasons set forth in the affidavits did not justify the delay and that, in view of the totality of circumstances, the motion had not been brought within a reasonable time. The Court clearly did not abuse its discretion in finding that the delay should not work to the detriment of the government in the present case.

II.

Rule 60(b)(5) is an improper device by which to seek relief from an order approving the monetary settlement of a civil action.

Rule 60(b)(5) of the Federal Rules of Civil Procedure provides that upon motion and such terms as are just, the court may relieve a party from a final judgment when "it is no longer equitable that the judgment should have prospective application." In disposing of the claimant's contention that Rule 60(b)(5) provided a basis for relief from Judge Timbers' July 1963 order, the Court below noted that:

> "Subsection (5), which replaced the former bill of review in equity, has no application here, since the judgment sought to be reopened does not have prospective effect. *Cf. United States* v. *Swift & Co.*, 286 U.S. 106 (1932). Its force was spent the day claimant's $5,000.00 was adjudicated to be the property of the United States."

An order approving a monetary settlement of a civil action should, for the purposes of Rule 60(b)(5), be viewed no differently than a judgment for money damages. In *Ryan* v. *United States Lines Co.*, 303 F.2d 430, 434 (2d Cir. 1962), this Court stated that Rule 60(b)(5) "does not cover the case of a judgment for money damages." *Cf. Block* v. *Thousandfriend,* 170 F.2d 428 (2d Cir. 1948).

III.

The United States retains the money in question pursuant to a court order approving a voluntary compromise of a disputed claim; that order should not be set aside under Rule 60(b).

The circumstances in the present case are fundamentally different from those in *United States* v. *U.S. Coin & Currency,* 401 U.S. 715 (1971). There the government instituted forfeiture proceedings against the money of a defendant who had been convicted of violating gambling registration laws. The process by which the money there in question was obtained from the defendant was criminal in nature. The Court specifically noted that the money liability was "predicated upon a finding of the owner's wrongful conduct. . . ." 401 U.S. at 718. In the present case, the claimant was neither unconstitutionally convicted, nor was he ever brought to trial in the forfeiture proceeding. Instead, the claimant entered into a voluntary compromise, which provided that $5,000 would be retained by the United States, that the balance of the $43,596 would be returned to him, and that the forfeiture action would be withdrawn with prejudice.

Unlike in *United States* v. *U.S. Coin and Currency, supra,* the government retains the money here in question pursuant to a voluntary accord and satisfaction of a disputed civil claim. That agreement, or compromise settlement, was reached as a result of mutual doubt on the part of both parties as to the final outcome if the action were to go to trial. By virtue of that agreement, each party forebore exercising valuable rights; the government promised not to pursue its claim against the entire $43,596, thereby eliminating the necessity for claimant's further defense of a civil action which the United States had every right to bring; and the claimant agreed not to contest the government's

retention of the money now in dispute. The government respectfully submits that, unlike the situation in *United States* v. *Summa,* 362 F. Supp. 1177 (D. Conn. 1972), which required the refund of fines levied on persons convicted of violations of federal wagering tax statutes, the money here in question is held by the United States pursuant to bargain which is supported by ample consideration.

The claimant argues that it is anomalous for him to be denied a return of the $5,000 presently at issue, while other people, who have been found guilty in criminal trials and forfeiture proceedings, have been held entitled to refunds of fines and forfeitures. The government sees no anomaly in restoring the status quo to persons whose wrongdoing was established in violation of their constitutional rights. As the Court noted in *United States* v. *Summa, supra,* fairness and equity demands as much, 362 F. Supp. at 1181. The circumstances of the present case, however, demand that the claimant be given the benefit of his bargain.

Certainly, *System Federation No. 91, Railway Employees' Department* v. *Wright,* 364 U.S. 642 (1961), does not require the nullification of a bargain such as the one entered into on July 15, 1963, between the parties. In that case the Court's chief concern was an injunction, which by its very nature was prospective in application. *System Federation, supra,* 364 U.S. at 647. In the present case, the compromise settlement was not continuing in nature. Rather, it was designed to settle, finally, a long and hotly contested civil proceeding. Logic, rather than calling for an application of *System Federation,* requires that a judgment which was intended to be final when entered, and which was treated as final for over a decade, be allowed to remain final. *Cf. Robinson* v. *E. P. Dutton & Co.,* 45 F.R.D. 360, 362 (S.D. N.Y. 1968); 7 J. Moore, Federal Practice ¶ 60.19, at 237. Also see *Knote* v. *United States,* 95 U.S. 149, 164 (1877).

IV.

By entering into a compromise settlement of the forfeiture action, the claimant intentionally relinquished a known right to claim his constitutional privilege against self-incrimination.

Waiver of a constitutional right requires an intentional relinquishment or abandonment of a known right or privilege. *Johnson* v. *Zerbst,* 304 U.S. 458 (1938). In *United States* v. *Summa,* 362 F. Supp. 1177, 1180 (D. Conn. 1972), the Court rejected the government's contention that the claimants therein, while defendants in earlier criminal proceedings, had waived their Fifth Amendment privilege. The Court noted that the failure of the claimants to assert their privilege against self-incrimination at the time of their guilty pleas did not rise to the level of a waiver in view of the case law which was then controlling, i.e., *Lewis* v. *United States,* 348 U.S. 419 (1955) and *United States* v. *Kahriger,* 345 U.S. 22 (1953). In the present case, however, the claimant vehemently asserted his privilege against self-incrimination in opposition to the government's attempt to depose the claimant in the forfeiture proceeding. (See Claimant's Memorandum in Support of Rule 30(b) Order, May 15, 1973).

The Fifth Amendment, as well as the privilege against self-incrimination, clearly existed in 1963. The claimant fully realized that they existed at that time. And the claimant did, in fact, assert his Fifth Amendment claim. Had the claimant not entered into the compromise settlement which terminated the forfeiture proceeding, he may well have been successful in asserting his claim. Instead, by entering into the stipulation the claimant chose, knowingly and voluntarily, to abandon that right. The government respectfully submits that this constituted a waiver of the constitutional claim he now asserts.

CONCLUSION

The United States respectfully submits that the decision of the District Court is sound and that principles of law, equity and fairness require that it be sustained.

Respectfully submitted,

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THOMAS P. SMITH
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APPENDIX

Stipulation Between Government and Claimants

United States District Court

DISTRICT OF CONNECTICUT

4715 Admiralty

UNITED STATES OF AMERICA

—vs.—

FORTY-THREE THOUSAND FIVE HUNDRED AND NINETY-SIX DOLLARS IN U. S. CURRENCY & ONE THOUSAND TWO HUNDRED NINE DOLLARS AND FOURTEEN CENTS IN NEGOTIABLE BANK CHECKS.

STIPULATION

It is hereby stipulated by and between the Libellant, United States of America, and the claimants, Jack Jacobson and Marion Jacobson, through their respective attorneys, as follows:

1. That the total sum of United States currency in the amount of Forty-three Thousand One Hundred and Ninety-six Dollars ($43,196.00) placed in five separate interest bearing accounts, as listed below, pursuant to the order of this Court dated May 15, 1963, be withdrawn from said accounts.

Stipulation

Savings Account	*Amount Placed in Account*	*Date of Account*
New Haven Savings Bank	$9,000.00	May 21, 1963
National Savings Bank	7,196.00	May 21, 1963
Connecticut Savings Bank	9,000.00	May 21, 1963
Second Federal Savings & Loan Association	9,000.00	May 24, 1963
First Federal Savings & Loan Association	9,000.00	May 24, 1963

2. That the United States Marshal, in closing out said accounts listed above, will obtain from one of said savings institutions, a bank check drawn to the order of the Treasurer of the United States, and will turn said check over to the United States Attorney, said check to be in the amount of Five Thousand ($5,000.00) Dollars.

3. It is agreed by and between the parties that the Five Thousand ($5,000.00) Dollars check referred to in paragraph 2 represents monies rightfully due and owed to the United States of America pursuant to this compromise, by stipulation, of the above-captioned action made this day. It is also agreed by and between the parties that neither said payment of Five Thousand ($5,000.00) Dollars to the United States of America, nor any paragraph, clause, statement or language in this stipulation, nor the execution of this compromise and stipulation itself, shall be construed as a confession of admission that the claimants, or either one of them, has ever violated or is currently violating any statute, regulation or administrative ruling of the United States Internal Revenue Code or of the United States Internal Revenue Service, or any other of the laws or regula-

tions of the United States. Specifically, it is agreed that the United States may not use the payment referred to in paragraph 2, this stipulation and compromise itself, nor any paragraph, clause, statement or language contained herein, in any other action or proceeding instituted by the United States against the claimants, or either one of them, whether that action be considered criminal, quasi-criminal, civil, admiralty or administrative in nature. Further, in consideration of the mutual promises and agreements contained herein, the claimants, their heirs, legal representatives and assigns, hereby release any claim they might have, or might have had, against the United States of America or any of its agents, servants or employees arising out of a search on November 18, 1960, of premises at 270 Crescent Street, New Haven, the institution and prosecution of Criminal No. 10,264 in this court, the libeling of the res of this action and the prosecution thereof, or the unavailability to the claimants of the res of this above captioned libel action between November 18, 1960 and the present date.

4. That the United States Marshal, in closing out all of the accounts listed above in paragraph 1, will obtain bank checks, except for the bank check listed above in paragraph 2, drawn to the order of Jack Jacobson, Marion Jacobson and Howard A. Jacobs, attorney, and will turn said bank checks over to attorneys for the claimants.

5. That the claimants herein will pay any and all Federal Income Taxes arising from any and all interests which has accrued on the five savings accounts listed above in paragraph 1, and, more particularly, will hold the United States Marshal, or any other agent of the United States Government harmless for any income tax liability arising out of interest accrued on said accounts.

Stipulation

6. That the United States Marshal will turn over to the attorneys for the claimants sixteen negotiable bank checks in the amount of One Thousand Two Hundred Nine Dollars and Fourteen Cents ($1,209.14), as set forth more specifically in a "schedule of negotiable bank checks" appended to the libel herein.

7. That the United States Marshal will turn over to the attorneys for the claimants the four one hundred dollar bills referred to in paragraph 3 of the stipulation entered into between these parties on May 15, 1963.

8. That the above entitled action be withdrawn with prejudice.

THE UNITED STATES OF AMERICA
ROBERT C. ZAMPANA,
United States Attorney

By ARNOLD MARKLE
Assistant United States Attorney

July 15, 1963

THE CLAIMANTS,
JACK JACOBSON and
MARION JACOBSON

By IRA B. GRUDBERG
Their Attorney

July 15, 1963

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United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 74-1358

UNITED STATES OF AMERICA
Libellant-Appellee

v.

Forty-Three Thousand Five Hundred Ninety Six Dollars ($43,569.00) In United States Currency, etc.
Appellant

AFFIDAVIT OF SERVICE BY MAIL

John White, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 297 Sumpter Street Brooklyn, N.Y.

That on the 10th day of May, 1974, deponent served the within Brief for the Libellant-Appellee upon Ira B. Grudberg, Esq. Jacobs, Jacobs & Grudberg 207 Orange Street, New Haven, Connecticut 06503

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Sworn to before me, John B White

This 10th day of May 1974

William A. McKaigney

WILLIAM A. McKAIGNEY
Notary Public, State of New York
No. 41-7846700
Qualified in Queens County
Certificate filed in Kings County
Commission Expires March 30, 1976